

APPEAL NO. 030903
FILED MAY 9, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on March 25, 2003. On the sole issue, the hearing officer determined that the average weekly wage (AWW) is \$350.00. The appellant (claimant/beneficiary) appeals essentially on sufficiency of the evidence grounds. The respondent (carrier) urges affirmance.

DECISION

Affirmed.

The hearing officer did not err in determining that the decedent's AWW is \$350.00. The claimant/beneficiary argues that \$350.00 was the decedent's net weekly wage, not the gross weekly wage needed to compute AWW. This was a question of fact for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). The claimant/beneficiary provided no evidence of the amount of federal taxes withheld, if any, from the decedent's weekly pay. In view of the evidence presented, the hearing officer could find that the decedent's gross weekly wage was \$350.00. We cannot conclude that the hearing officer's determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **AMERICAN INTERSTATE INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**MR. STEVE ROPER
1616 SOUTH CHESTNUT STREET
LUFKIN, TEXAS 75902.**

Edward Vilano
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Thomas A. Knapp
Appeals Judge